

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ERIC GOOLSBY NASH,

Petitioner,

v.

Case No. 05-C-1273

WARDEN WILLIAM POLLARD,

Respondent.

RECOMMENDATION ON THE HABEAS CORPUS PETITION

Eric Goolsby Nash (“Nash”), is a prisoner convicted of (1) attempted armed robbery and (2) first degree intentional homicide while armed, both as a party to a crime. Nash is currently is incarcerated pursuant to a Wisconsin state court judgment entered against him in 1993 based on this conviction and is serving a life sentence.

Proceeding pro se, Nash seeks a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Under Rule 4 Rule of the Rules Governing Section 2254 Cases, the court must make a preliminary examination of the petition. If “it plainly appears from the face of the petition and any exhibits annexed to it that the petitioner is not entitled to relief in district court, the judge shall make an order for its summary dismissal.” Rule 4, Rules Governing Section 2254 Cases.

In his petition for habeas corpus relief, Nash claims that his trial and appellate counsel provided ineffective assistance. A preliminary review of the petition reveals that Nash is not entitled to relief. This is not the first time that Nash has challenged the 1993 conviction by way of a § 2254 petition for habeas corpus relief. In 1999, Nash filed a § 2254 petition in which he asserted that the 1993 conviction is based on insufficient evidence and violates due process. Because the petition was not filed within

the one-year statute of limitations set forth at 28 U.S.C. § 2244(d)(1), and Nash did not present adequate reason for his delay, the petition was dismissed as untimely. Nash v. Whalen, No. 99-C-86 (E.D. Wis., Feb. 3, 1999)(order dismissing petition, J. Clevert). This remains the case, and the court should not entertain a second untimely petition. Accordingly, the court now enters the following recommendation:

IT IS THEREFORE RECOMMENDED that the petition be **denied** and this case be **dismissed**.

Your attention is directed to 28 U.S.C. § 636(b)(1)(B) and (C) and General Local Rule 72.3 (E.D. Wis.), whereby written objections to any recommendation herein or part thereof may be filed within ten days of service of this recommendation. Objections are to be filed in accordance with the Eastern District of Wisconsin's electronic case filing procedures. Courtesy paper copies of any objections shall be sent directly to the chambers of the district judge assigned to the case. Failure to file a timely objection with the district court shall result in a waiver of your right to appeal.

Dated at Milwaukee, Wisconsin, this 9th day of January, 2006.

s/AARON E. GOODSTEIN
United States Magistrate Judge